

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 218

Introduced by Stuthman, 22; Aguilar, 35; Combs, 32; Erdman, 47

Read first time January 7, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to child abuse and neglect; to amend sections
2 28-714 to 28-724, 28-727, 43-2909, 43-3709, and 71-6906,
3 Reissue Revised Statutes of Nebraska, and sections
4 28-710, 28-711, 28-713, 28-713.01, 28-725, and 28-726,
5 Revised Statutes Supplement, 2004; to name an act; to
6 change provisions relating to child abuse and neglect
7 reports and the central register of child protection
8 cases; to provide for a tracking system of child
9 protection cases; to eliminate a registry; to harmonize
10 provisions; and to repeal the original sections.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-710, Revised Statutes Supplement,
2 2004, is amended to read:

3 28-710. (1) Sections 28-710 to 28-727 and section 12 of
4 this act shall be known and may be cited as the Child Protection
5 Act.

6 (2) For purposes of sections 28-710 to 28-727, unless the
7 context otherwise requires the Child Protection Act:

8 ~~(1) Abuse~~ (a) Child abuse or neglect means knowingly,
9 intentionally, or negligently causing or permitting a minor child
10 to be:

11 ~~(a)~~ (i) Placed in a situation that endangers his or her
12 life or physical or mental health;

13 ~~(b)~~ (ii) Cruelly confined or cruelly punished;

14 ~~(c)~~ (iii) Deprived of necessary food, clothing, shelter,
15 or care;

16 ~~(d)~~ (iv) Left unattended in a motor vehicle if such minor
17 child is six years of age or younger;

18 ~~(e)~~ (v) Sexually abused; or

19 ~~(f)~~ (vi) Sexually exploited by allowing, encouraging, or
20 forcing such person to solicit for or engage in prostitution,
21 debauchery, public indecency, or obscene or pornographic
22 photography, films, or depictions;

23 ~~(2)~~ (b) Department means the Department of Health and
24 Human Services;

25 ~~(3)~~ (c) Law enforcement agency means the police
26 department or town marshal in incorporated municipalities, the
27 office of the sheriff in unincorporated areas, and the Nebraska
28 State Patrol; ~~and~~

1 ~~(4)~~ (d) Out-of-home child abuse or neglect means child
2 abuse or neglect occurring in day care homes, foster homes, day
3 care centers, group homes, and other child care facilities or
4 institutions; and

5 (e) Subject of the report of child abuse or neglect means
6 the person or persons identified in the report as responsible for
7 the child abuse or neglect.

8 Sec. 2. Section 28-711, Revised Statutes Supplement,
9 2004, is amended to read:

10 28-711. (1) When any physician, medical institution,
11 nurse, school employee, social worker, or other person has
12 reasonable cause to believe that a child has been subjected to
13 child abuse or neglect or observes such child being subjected to
14 conditions or circumstances which reasonably would result in child
15 abuse or neglect, he or she shall report such incident or cause a
16 report of child abuse or neglect to be made to the proper law
17 enforcement agency or to the department on the toll-free number
18 established by subsection (2) of this section. Such report may be
19 made orally by telephone with the caller giving his or her name and
20 address, shall be followed by a written report, and to the extent
21 available shall contain the address and age of the abused or
22 neglected child, the address of the person or persons having
23 custody of the abused or neglected child, the nature and extent of
24 the child abuse or neglect or the conditions and circumstances
25 which would reasonably result in such child abuse or neglect, any
26 evidence of previous child abuse or neglect including the nature
27 and extent, and any other information which in the opinion of the
28 person may be helpful in establishing the cause of such child abuse

1 or neglect and the identity of the perpetrator or perpetrators.
2 Law enforcement agencies receiving any reports of child abuse or
3 neglect under this subsection shall notify the ~~state central~~
4 ~~registry~~ the department pursuant to section 28-718 on the next
5 working day by telephone or mail.

6 (2) The department shall establish a statewide toll-free
7 number to be used by any person any hour of the day or night, any
8 day of the week, to make reports of child abuse or neglect.
9 Reports of child abuse or neglect not previously made to or by a
10 law enforcement agency shall be made immediately to such agency by
11 the department.

12 Sec. 3. Section 28-713, Revised Statutes Supplement,
13 2004, is amended to read:

14 28-713. Upon the receipt of a call reporting child abuse
15 and neglect as required by section 28-711:

16 (1) It is the duty of the law enforcement agency to
17 investigate the report, to take immediate steps to protect the
18 child, and to institute legal proceedings if appropriate. In
19 situations of alleged out-of-home child abuse or neglect if the
20 person or persons to be notified have not already been notified and
21 the person to be notified is not the subject of the report of child
22 abuse or neglect, the law enforcement agency shall immediately
23 notify the person or persons having custody of each child who has
24 allegedly been abused or neglected that such report of alleged
25 child abuse or neglect has been made and shall provide such person
26 or persons with information of the nature of the alleged child
27 abuse or neglect. The law enforcement agency may request
28 assistance from the Department of Health and Human Services during

1 the investigation and shall, by the next working day, notify either
2 the hotline or the department of receipt of the report, including
3 whether or not an investigation is being undertaken by the law
4 enforcement agency. A copy of all reports, whether or not an
5 investigation is being undertaken, shall be provided to the
6 department;

7 (2) In situations of alleged out-of-home child abuse or
8 neglect if the person or persons to be notified have not already
9 been notified and the person to be notified is not the subject of
10 the report of child abuse or neglect, the department shall
11 immediately notify the person or persons having custody of each
12 child who has allegedly been abused or neglected that such report
13 of alleged child abuse or neglect has been made and shall provide
14 such person or persons with information of the nature of the
15 alleged child abuse or neglect and any other information that the
16 department deems necessary. The department shall investigate for
17 the purpose of assessing each report of child abuse or neglect to
18 determine the risk of harm to the child involved. The department
19 shall also provide such social services as are necessary and
20 appropriate under the circumstances to protect and assist the child
21 and to preserve the family;

22 (3) The department may make a request for further
23 assistance from the appropriate law enforcement agency or take such
24 legal action as may be appropriate under the circumstances;

25 (4) The department shall, by the next working day after
26 receiving a report of child abuse or neglect under subdivision (1)
27 of this section, make a written report or a summary on forms
28 provided by the department to the proper law enforcement agency in

1 the county and enter in the ~~central registry~~ tracking system of
2 child protection cases maintained pursuant to section 28-715 all
3 reports of child abuse or neglect opened for investigation ~~of abuse~~
4 ~~or neglect~~ and any action taken; and

5 (5) The department shall, upon request, make available to
6 the appropriate investigating law enforcement agency and the county
7 attorney a copy of all reports relative to a case of suspected
8 child abuse or neglect.

9 Sec. 4. Section 28-713.01, Revised Statutes Supplement,
10 2004, is amended to read:

11 28-713.01. Upon completion of the investigation pursuant
12 to section 28-713:

13 (1) In situations of alleged out-of-home child abuse or
14 neglect, the person or persons having custody of the allegedly
15 abused or neglected child or children shall be given written notice
16 of the results of the investigation and any other information the
17 law enforcement agency or department deems necessary. Such notice
18 and information shall be sent by first-class mail; and

19 (2) The subject of the report of child abuse or neglect
20 shall be given written notice of the determination of the case and
21 whether the subject of the report of child abuse or neglect will be
22 entered into the central register ~~pursuant to subdivision (1), (2),~~
23 ~~or (3)~~ of child protection cases maintained pursuant to section
24 28-718 under the criteria provided in section 28-720.

25 Such notice to the subject shall be sent by certified
26 mail to the ~~subject's~~ last-known address of the subject of the
27 report of child abuse or neglect and shall include:

28 (a) The nature of the report;

1 (b) The classification of the report under section
2 28-720; and

3 (c) Notification of the ~~subject's~~ right of the subject of
4 the report of child abuse or neglect to a hearing and appeal in
5 accordance with section 28-723.

6 Sec. 5. Section 28-714, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-714. The privileged communication between patient and
9 physician, between client and professional counselor, and between
10 husband and wife shall not be a ground for excluding evidence in
11 any judicial proceeding resulting from a report ~~pursuant to~~
12 ~~sections 28-710 to 28-717~~ of child abuse or neglect required by
13 section 28-711.

14 Sec. 6. Section 28-715, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 28-715. The department shall ~~file each report of~~
17 ~~suspected abuse or neglect in a special state Abused or Neglected~~
18 ~~Child Registry to be maintained in the department~~ retain all
19 information from all reports of suspected child abuse or neglect
20 required by section 28-711 and all records generated as a result of
21 such reports in a tracking system of child protection cases. The
22 tracking system shall be used for statistical purposes as well as a
23 reference for future investigations if subsequent reports of child
24 abuse or neglect are made involving the same victim or subject of a
25 report of child abuse or neglect.

26 Sec. 7. Section 28-716, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 28-716. Any person participating in an investigation or

1 the making of a report of child abuse or neglect required by
2 section 28-711 pursuant to ~~the provisions of sections 28-710 to~~
3 ~~28-717~~ or participating in a judicial proceeding resulting
4 therefrom shall be immune from any liability, civil or criminal,
5 that might otherwise be incurred or imposed, except for maliciously
6 false statements.

7 Sec. 8. Section 28-717, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 28-717. Any person who willfully fails to make any
10 report of child abuse or neglect required by ~~the provisions of~~
11 ~~sections 28-710 to 28-717, or knowingly releases confidential~~
12 ~~information other than as provided by sections 28-710 to 28-717,~~
13 section 28-711 shall be guilty of a Class III misdemeanor.

14 Sec. 9. Section 28-718, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 28-718. There shall be a central register of child
17 protection cases maintained in the department containing records of
18 all reports of child abuse or neglect opened for investigation as
19 provided in section 28-713 and classified as either court
20 substantiated or agency substantiated as provided in section
21 28-720.

22 Sec. 10. Section 28-719, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 28-719. Upon complying with identification requirements
25 established by regulation of the department, or when ordered by a
26 court of competent jurisdiction, any person legally authorized by
27 section 28-722, 28-726, or 28-727 to have access to records
28 relating to child abuse and neglect may request and shall be

1 immediately provided the information requested in accordance with
2 the requirement of ~~sections 28-710 to 28-713, 28-715, and 28-718 to~~
3 ~~28-727~~ the Child Protection Act. Such information shall not
4 include the name and address of the person making the report of
5 child abuse or neglect. The names and other identifying data and
6 the dates and the circumstances of any persons requesting or
7 receiving information from the central register of child protection
8 cases maintained pursuant to section 28-718 shall be entered in ~~the~~
9 such register record.

10 Sec. 11. Section 28-720, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-720. All cases ~~in~~ entered into the central register
13 of child protection cases maintained pursuant to section 28-718
14 shall be classified in as one of the following:

15 (1) categories: (1) Court substantiated, if a court of
16 competent jurisdiction has entered a judgment of guilty against the
17 subject of the report of child abuse or neglect upon a criminal
18 complaint, indictment, or information or there has been an
19 adjudication of jurisdiction of a juvenile court over the child
20 under subdivision (3)(a) of section 43-247 which relates or
21 pertains to the report of child abuse or neglect; (2) petition to
22 be filed; (3) investigation inconclusive; or (4) unfounded report,
23 whichever the case may be. All information identifying the
24 subjects of unfounded reports shall be expunged from the register
25 forthwith

26 (2) Court pending, if a criminal complaint, indictment,
27 or information or a juvenile petition under subdivision (3)(a) of
28 section 43-247, which relates or pertains to the subject of the

1 report of abuse or neglect, has been filed and is pending in a
2 court of competent jurisdiction; or

3 (3) Agency substantiated, if the department's
4 determination of child abuse or neglect against the subject of the
5 report of child abuse or neglect was made, by a preponderance of
6 the evidence, based upon an investigation pursuant to section
7 28-713.

8 Sec. 12. All reports of child abuse or neglect which are
9 not under subdivision (1), (2), or (3) of section 28-720 shall be
10 considered unfounded and shall be maintained only in the tracking
11 system of child protection cases pursuant to section 28-715 and not
12 in the central register of child protection cases maintained
13 pursuant to section 28-718.

14 Sec. 13. Section 28-721, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 28-721. At any time, the department may amend, expunge,
17 or remove from the central register of child protection cases
18 maintained pursuant to section 28-718 any record upon good cause
19 shown and upon notice to the ~~subjects~~ subject of the report of
20 child abuse or neglect and to the division.

21 Sec. 14. Section 28-722, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 28-722. Upon request, a subject of a the report of child
24 abuse or neglect or, if such subject is a minor or otherwise
25 legally incompetent, the guardian or guardian ad litem of the
26 ~~person~~ subject, shall be entitled to receive a copy of all
27 information contained in the central register of child protection
28 cases maintained pursuant to section 28-718 pertaining to his or

1 her case. The department shall not release data that would be
2 harmful or detrimental or that would identify or locate a person
3 who, in good faith, made a report of child abuse or neglect or
4 cooperated in a subsequent investigation unless ordered to do so by
5 a court of competent jurisdiction.

6 Sec. 15. Section 28-723, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-723. At any time subsequent to the completion of the
9 department's investigation, ~~a~~ the subject of a the report of child
10 abuse or neglect may request the department to amend, expunge
11 identifying information from, or remove the record of the report
12 from the ~~register~~ central register of child protection cases
13 maintained pursuant to section 28-718. If the department refuses
14 to do so or does not act within thirty days, the subject of the
15 report of child abuse or neglect shall have the right to a fair
16 hearing within the department to determine whether the record of
17 the report of child abuse or neglect should be amended, expunged,
18 or removed on the grounds that it is inaccurate or that it is being
19 maintained in a manner inconsistent with ~~sections 28-710, 28-711,~~
20 ~~28-712, 28-713, 28-715, and 28-718~~ to 28-727 the Child Protection
21 Act. Such fair hearing shall be held within a reasonable time
22 after the subject's request and at a reasonable place and hour. In
23 such hearings, the burden of proving the accuracy and consistency
24 of the record shall be on the department. A juvenile court finding
25 of child abuse or child neglect shall be presumptive evidence that
26 the report was not unfounded. The hearing shall be conducted by
27 the head of the department or his or her designated agent, who is
28 hereby authorized and empowered to order the amendment, expunction,

1 or removal of the record to make it accurate or consistent with the
2 requirements of ~~sections 28-710, 28-711, 28-712, 28-713, 28-715,~~
3 ~~and 28-718 to 28-727~~ the act. The decision shall be made in
4 writing, at the close of the hearing, or within thirty days
5 thereof, and shall state the reasons upon which it is based.
6 Decisions of the department may be appealed under the provisions of
7 the Administrative Procedure Act.

8 Sec. 16. Section 28-724, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 28-724. Written notice of any amendment, expunction, or
11 removal of any record in the central register of child protection
12 cases maintained pursuant to section 28-718 ~~made pursuant to~~
13 ~~sections 28-710, 28-711, 28-712, 28-713, 28-715, and 28-718 to~~
14 ~~28-727~~ shall be served upon the subject of ~~such~~ the report of child
15 abuse or neglect. The department shall inform any other
16 individuals or agencies which received such record ~~pursuant to~~
17 ~~sections 28-710, 28-711, 28-712, 28-713, 28-715, and 28-718 to~~
18 ~~28-727 or in any other manner to amend, expunge, or remove of any~~
19 amendment, expunction, or removal of such record.

20 Sec. 17. Section 28-725, Revised Statutes Supplement,
21 2004, is amended to read:

22 28-725. All ~~records~~ information of the department
23 concerning reports of child abuse or neglect of noninstitutional
24 ~~child abuse or neglect~~ children, including ~~reports made to the~~
25 ~~department or~~ information in the tracking system of child
26 protection cases maintained pursuant to section 28-715 or records
27 in the central register of child protection cases maintained
28 pursuant to section 28-718, and all ~~records~~ information of the

1 department generated as a result of such reports or records, shall
2 be confidential and shall not be disclosed except as specifically
3 authorized by ~~sections 28-710 to 28-713, 28-715, 28-718 to 28-727,~~
4 and the Child Protection Act and sections 28-734 to 28-739 or other
5 applicable law. The subject of the report of child abuse or
6 neglect may authorize any individual or organization to receive the
7 following information from the central register of child protection
8 cases maintained pursuant to section 28-718 which relates or
9 pertains to him or her: (1) The date of the alleged child abuse or
10 neglect; and (2) the classification of the case pursuant to section
11 28-720. Permitting, assisting, or encouraging the unauthorized
12 release of any information contained in such reports or records
13 shall be a Class V misdemeanor.

14 Sec. 18. Section 28-726, Revised Statutes Supplement,
15 2004, is amended to read:

16 28-726. Except as provided in this section and sections
17 28-722 and 28-734 to 28-739, no person, official, or agency shall
18 have access to ~~such records~~ information in the tracking system of
19 child protection cases maintained pursuant to section 28-715 or in
20 records in the central register of child protection cases
21 maintained pursuant to section 28-718 unless in furtherance of
22 purposes directly connected with the administration of ~~sections~~
23 ~~28-710 to 28-727~~ the Child Protection Act. Such persons,
24 officials, and agencies having access to such ~~records~~ information
25 shall include, but not be limited to:

26 (1) A law enforcement agency investigating a report of
27 known or suspected child abuse or neglect;

28 (2) A county attorney in preparation of ~~an abuse,~~

1 ~~neglect, or termination~~ a child abuse or neglect petition or
2 termination of parental rights petition;

3 (3) A physician who has before him or her a child whom he
4 or she reasonably suspects may be abused or neglected;

5 (4) An agency having the legal responsibility or
6 authorization to care for, treat, or supervise an abused or
7 neglected child or a parent, a guardian, or other person
8 responsible for the abused or neglected child's welfare who is the
9 subject of ~~a~~ the report of child abuse or neglect;

10 (5) Any person engaged in bona fide research or auditing.
11 No information identifying the subjects of the report of child
12 abuse or neglect shall be made available to the researcher or
13 auditor;

14 (6) The State Foster Care Review Board when the ~~records~~
15 ~~relate~~ information relates to a child in a foster care placement as
16 defined in section 43-1301. The ~~records~~ information provided to
17 the state board shall not include the name or identity of any
18 person making a report of suspected child abuse or neglect;

19 (7) The designated protection and advocacy system
20 authorized pursuant to ~~the Developmental Disabilities Assistance~~
21 ~~and Bill of Rights Act, 42 U.S.C. 6000,~~ as the act existed on
22 September 1, 2001, and the Protection and Advocacy for Mentally Ill
23 Individuals Act, 42 U.S.C. 10801, as the act existed on September
24 1, 2001, acting upon a complaint received from or on behalf of a
25 person with developmental disabilities or mental illness;

26 (8) The person or persons having custody of the abused or
27 neglected child in situations of alleged out-of-home child abuse or
28 neglect; and

1 (9) For purposes of licensing providers of child care
2 programs, the Department of Health and Human Services Regulation
3 and Licensure.

4 Sec. 19. Section 28-727, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-727. Upon request, a physician or the person in
7 charge of an institution, school, facility, or agency making a
8 legally mandated report of child abuse or neglect pursuant to
9 section 28-711 shall receive a summary of the findings of and
10 actions taken by the department in response to his or her report.
11 The amount of detail such summary contains shall depend on the
12 source of the report of child abuse or neglect and shall be
13 established by regulations of the department.

14 Sec. 20. Section 43-2909, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 43-2909. (1) The mediator may terminate mediation if one
17 or more of the following conditions exist:

18 (a) There is no reasonable possibility that mediation
19 will promote the development of an effective parenting plan;

20 (b) Allegations are made of direct physical or
21 significant emotional harm to a party or to a minor child that have
22 not been heard and ruled upon by the court. Prior to the
23 commencement of mediation, the parties to mediation shall be
24 notified by the mediator that evidence of child abuse or neglect as
25 defined in section 28-710 shall be reported to the district judge
26 who shall hold an in camera hearing to determine whether a report
27 should be made pursuant to section 28-711 and if further
28 investigation is merited; or

1 (c) Mediation will otherwise fail to serve the best
2 interests of the minor child.

3 (2) If mediation is not appropriate pursuant to
4 subsection (1) of this section, the mediator shall so inform the
5 court. Any additional statements shall not be prejudicial to
6 either party.

7 (3) Either party may terminate mediation at any point in
8 the process.

9 Sec. 21. Section 43-3709, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 43-3709. (1) The minimum qualifications for any
12 prospective court appointed special advocate volunteer are that he
13 or she shall:

14 (a) Be at least twenty-one years of age or older and have
15 demonstrated an interest in children and their welfare;

16 (b) Be willing to commit to the court for a minimum of
17 one year of service to a child;

18 (c) Complete an application, including providing
19 background information required pursuant to subsection (2) of this
20 section;

21 (d) Participate in a screening interview; and

22 (e) Participate in the training required pursuant to
23 section 43-3708.

24 (2) As required background screening, the program
25 director shall obtain the following information regarding a
26 volunteer applicant:

27 (a) A check of the applicant's criminal history record
28 information maintained by the Identification Division of the

1 Federal Bureau of Investigation through the Nebraska State Patrol;

2 (b) A check of his or her record with the ~~state Abused or~~
3 ~~Neglected Child Registry~~ central register of child protection cases
4 maintained under section 28-718;

5 (c) A check of his or her driving record; and

6 (d) At least three references who will attest to the
7 applicant's character, judgment, and suitability for the position
8 of a court appointed special advocate volunteer.

9 (3) If the applicant has lived in Nebraska for less than
10 twelve months, the program director shall obtain the records
11 required in subdivisions (2)(a) through (2)(c) of this section from
12 all other jurisdictions in which the applicant has lived during the
13 preceding year.

14 Sec. 22. Section 71-6906, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 71-6906. Notification shall not be required pursuant to
17 sections 71-6901 to 71-6908 if any of the following conditions
18 exist:

19 (1) The attending physician certifies in writing in the
20 pregnant woman's medical record that continuation of the pregnancy
21 provides an immediate threat and grave risk to the life or health
22 of the pregnant woman and there is insufficient time to provide the
23 required notification;

24 (2) The abortion is authorized in writing by the person
25 who is entitled to notification; or

26 (3) The pregnant woman declares that she is a victim of
27 abuse as defined in section 28-351, sexual abuse as defined in
28 section 28-367, or child abuse or neglect as defined in section

1 28-710. Notice of such a declaration shall be made to the proper
2 authorities as provided in sections 28-372 and 28-711. If such a
3 declaration is made, the attending physician or his or her agent
4 shall inform the pregnant woman of his or her duty to notify the
5 proper authorities as provided in sections 28-372 and 28-711.

6 Sec. 23. Original sections 28-714 to 28-724, 28-727,
7 43-2909, 43-3709, and 71-6906, Reissue Revised Statutes of
8 Nebraska, and sections 28-710, 28-711, 28-713, 28-713.01, 28-725,
9 and 28-726, Revised Statutes Supplement, 2004, are repealed.